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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/021,617 02/10/98 SCHRAMM

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EXAMINER

GM51/1109

MICHAEL R SCHRAMM  
350 WEST 2000 SOUTH  
FERRY UT 84302

DOUGLAS, S

ART UNIT	PAPER NUMBER
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3751

DATE MAILED:

11/09/98

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/021,617</b>	Applicant(s) <b>Schramm</b>
	Examiner <b>Steven O. Douglas</b>	Group Art Unit <b>3751</b>

Responsive to communication(s) filed on Aug 20, 1998

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-20 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In regard to newly amended claims 1,8,14 and 20, Applicant's limitation of a "non-cavitation bubble creation apparatus" is considered **new matter** by the Examiner since such limitation is not supported by Applicant's originally filed written disclosure.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by D'Andrade.

The D'Andrade reference discloses a bubble producing apparatus comprising an "automated bubble producing device" 51 and a "liquid emitting device" 31 including a plurality of

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“exit ports” or apertures, wherein as much as Applicant has defined by a “liquid emitting device”  
the movement of air by the impeller device <sup>31</sup> causing the “emission” of bubbles, which are  
comprised of liquid, meets Applicant’s claimed limitation of a “non-bubble liquid emitting device”.

4. Claims 1-5,8-11,14-17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Henkin et al.

The Henkin et al. reference discloses a submergible hand-held hydro massager that emits a flow of water and bubbles (i.e. see the cavitation shown in Figure 1) comprising a “liquid powered or hydraulic motor” 230 and a plurality of “exit ports” 142, wherein the device is connectable to a conventional residential or commercial tap water source (see col. 3, lines 29-32) which is considered to meet Applicant’s limitation of a “pressurized water container”. All functional and introductory statements of intended use have been carefully considered but are deemed not to impose any structure on the claims distinguishable over the Henkin et al. device which is further capable of being used as a toy if one so desires.

#### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Furthermore, Examiner's position with respect to Applicant's newly added limitations has been incorporated into the above stated rejections.

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*Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (703) 308-0891.



STEVEN O. DOUGLAS  
PATENT EXAMINER

SD

November 6, 1998